United Nations **AT**

Administrative Tribunal

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ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 947

Case No. 1057: IBRAHIM

Against: The Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Hubert Thierry, President; Mr. Julio Barboza, Vice-President; Mr. Kevin Haugh;

Whereas, on 15 December 1998, Farhan Ibrahim, a former staff member of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (hereinafter referred to as UNRWA or the Agency), filed an application containing pleas which read as follows:

"II. The pleas:

1. To consider this application as being filed within the time limit stated in article 7, paragraph 4, of the Statute of the Administrative Tribunal …

2. Alternatively, to suspend the provisions regarding time limits, according to article 7, paragraph 5 of the Statute.

3. To rescind the decision.

4. To fix 50,000 US$, as the appropriate remedy for the Applicant."

Whereas the Respondent filed his answer on 8 August 1999;

Whereas the facts in the case are as follows:

The Applicant entered the service of UNRWA as an Area staff member, in the capacity of Teacher Training Instructor "D" at Ramallah Men's Training Center (RMTC), West Bank, effective 31 August 1961, on a temporary indefinite appointment. On 1 May 1988, he was promoted to the post of Deputy Principal and Chief Instructor, RMTC, grade 14.

On 7 November 1995, the UNWRA Headquarters Coordinator of Operations (HQ CO-OP), West Bank and Gaza, convened a Board of Inquiry (BOI) to "inquire about the handling of instructor's fees for administering the Comprehensive Examination in RMTC in 1994". It was alleged, in particular, that a fake list of participating teachers was submitted and the funds thus obtained improperly distributed. The BOI was asked to present its report no later than 20 November 1995. Its mandate was to determine, at least, the following:

(a) Whether the list of instructors was intentionally forged or whether the surplus remuneration came as a windfall;

(b) Whether the Senior Clerk and/or the Deputy Principal took/kept the surplus funds dishonestly; and,

(c) Whether and to what extend the Principal was involved.

In a letter received on 2 March 1996, the Applicant wrote to the Field Administration Officer (FAO), West Bank, stating that "for pressing family reasons", he had decided to take early voluntary retirement in accordance with Area staff rule 109.2, effective 1 May 1995, subject to approval. A handwritten notation on the letter states that "there is a Board of Inquiry currently into this [staff member's] involvement in misappropriation of funds, [please] do not release entitlements yet."

The BOI submitted its report to the HQ CO-OP on 16 April 1996. The BOI concluded, *inter alia*, that:

- The Deputy Principal had an opportunity to nominate staff at the RMTC for the practical part of the Comprehensive Exam in 1994 and two of the nominees were not working at the RMTC when the list was prepared. As the Deputy Principal had arranged with the Exam Board that

RMTC staff who contributed to the Exam would be remunerated, he knew which nominees were to be paid. As he was responsible for the compiling of the list, he must have known it was incorrect.

- The Senior Clerk collected the remuneration due from the Directorate Office of Education/Ramallah. He distributed remuneration to four staff only and gave the rest to the Deputy Principal.

- The Deputy Principal stated that he had used the surplus money to subsidize students' fees for needy students. However, there was no documentation of students' fees allegedly paid by the Deputy Principal from the surplus funds. It was proved that no authorization had been given to him to use the funds for that purpose. In addition, the fact that he paid back NIS (new Israeli shekel) 1,021 from his "pocket" to the Ministry was further reason to believe that he kept the amount dishonestly.

- The Deputy Principal confessed that he had made an administrative mistake in dealing with the surplus funds.

- The BOI could not deny the possibility of a conspiracy among staff at the Directorate Office of Education, the Senior Clerk and the Deputy Principal to misappropriate remuneration, but it could find no evidence thereof.

On 30 September 1996, the HQ CO-OP informed the Applicant that the BOI had established that he was guilty of misconduct and that, accordingly, it was decided to terminate his appointment for misconduct under Area staff regulation 10.2 and Area staff rule 110.1, with immediate effect. The actual date of separation was 19 November 1996.

On 27 December 1996, the FAO met with the Chairman, Area Staff Union, West Bank, who asked whether the HQ CO-OP had reconsidered the disciplinary action taken against the Applicant. The FAO told him that the HQ CO-OP had reconsidered the case and had decided that the decision should stand.

On the same date, the FAO wrote to the Applicant that his request for reconsideration had been denied.

On 5 January 1997, the Applicant lodged an appeal with the Joint Appeals Board (JAB). The JAB submitted its report on 28 April 1998. Its evaluation, judgement and recommendation read, in part, as follows:

"III. EVALUATION AND JUDGEMENT

15. ...

(d) The Board also noted that the Appellant confessed that he had made an administrative mistake in dealing with the surplus of funds. This is a proof that there had been no conspiracy between the Appellant and the Senior Clerk. It is also worth mentioning that the Senior Clerk had been acquitted by the Commissioner-General ...

(e) The Board also noted that the Appellant was requested to remain in his post until the vacation during which time he kept his capacity as expending officer which implies that he enjoys the trust of his supervisors.

(f) The Board is of the opinion that the mistake lies in the first instance in the Directorate of Education which ... should not have handed the money to an unauthorized person.

(g) In this context, the Board is of the opinion that the disciplinary measures imposed on the Appellant are harsh, taking into consideration that the administrative mistake was made in good faith and unintentionally and that he had a good record throughout his long years of service with UNRWA.

IV. RECOMMENDATION

16. In view of the foregoing ..., the Board unanimously makes it recommendation that the Administration's decision appealed against be reviewed."

On 3 June 1998, the Commissioner General transmitted a copy of the JAB report to the Applicant and informed him as follows:

"...

Your services with the Agency were terminated for misconduct following the findings of a Board of Inquiry. It had established that the Palestinian Authority was given a list of instructors, nominated for payment for the supervision of an examination at RMTC, which was false in that it included instructors who had not effected the work and were not entitled to payment. The Board of Inquiry concluded that you produced the list and that you knew the list was false.

The Board of Inquiry also established that you then received payment for the instructors who had not worked and kept the money yourself. You told the Board of Inquiry that you used this money to cover the fees of needy students. However, you agreed that you were not authorized to do this, could not prove that you had done so, and had repaid the money when your malpractice became known.

While you attempted to characterize this as an 'administrative mistake', based on the findings of the Board of Inquiry, the Administration took the view that your actions were deliberate and that you could only have had dishonest motives. The Administration also was of the opinion, with which I agree, that it could not ignore or treat lightly the dishonest acquisition and retention of educational funds by a staff member in the position of Deputy Principal, nor could it ignore the extreme embarrassment caused to the Agency by your actions in its relations with the Ministry of Education of the Palestinian Authority.

The Joint Appeals Board ignored the facts as found by the Board of Inquiry, without explanation, and proceeded on the basis of your explanation concluding that 'the administrative mistake was made in good faith and unintentionally'. It then compared your case to the case of ..., which is irrelevant as that was a case where the Board of Inquiry *did* find that an administrative mistake had been made. In short, the Joint Appeals Board failed to address the facts as found, failed to address the central issue of dishonesty, and made an irrelevant comparison.

...

In paragraph 15 (e) of the report, the Joint Appeals Board 'noted that the Appellant was requested to remain in his post until the vacation during which time he kept his capacity as expending officer which implies that he enjoys the trust of his supervisors'. However, this request implies no such thing. You were asked to stay on because the RMTC would otherwise have been unsupervised.

The Joint Appeals Board recommended that 'the Administration's decision appealed against be reviewed'. However, I do not believe that the Agency can be seen to condone fraud by a senior officer in a position of trust.

For these reasons, I am not prepared to accept the conclusions and recommendation of the Joint Appeals Board. Your appeal is dismissed."

On 15 December 1998, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. Because of the continuing closure of the West Bank, the Applicant faced difficulties in reaching the office of his Counsel. The application was prepared as soon as the circumstances allowed.

2. His appointment was terminated without "just cause" or "good cause". He admitted making an administrative mistake, however, he had done so with the intention to help needy students.

Whereas the Respondent's principal contentions are:

1. The application is not receivable as it is time-barred.

2. The Applicant misappropriated funds pursuant to the production of a false document, which was intended to deceive, and did deceive, in breach of the trust placed in him in his position of authority and responsibility. Thus, the Respondent was fully justified in terminating the Applicant's appointment for misconduct.

The Tribunal, having deliberated from 10 to 28 July 2000, now pronounces the following judgement:

I. Where a JAB has made a recommendation favourable to an applicant and the Respondent has rejected that recommendation, article 7, paragraph 4 of the Statute of the Tribunal provides that an application to the Administrative Tribunal shall not be receivable unless it is filed within ninety days of the rejection by the Respondent of the JAB's recommendation.

II. By letter dated 3 June 1998, the Applicant was informed of the Respondent's decision rejecting the JAB's recommendation and informed that his appeal against the decision to terminate his services for misconduct was dismissed.

The Applicant submitted his application to the Tribunal on 15 December 1998, which was more than ninety days after the time limit previously referred to had expired. Article 7, paragraph 5

of the Statute empowers the Tribunal to suspend provisions regarding time limits. The Tribunal has indicated in many instances in the past (Judgements No. 759, *Shehabi* (1996); No. 835, *Dia* (1997); No. 856, *Chowaniec* (1997); No. 873, *Patel* (1998); No. 913, *Midaya* (1999) and No. 938, *Oustinovitch* (1999)) that this power to suspend or extend time limits shall not be exercised unless it finds that genuine exceptional circumstances exist that would justify it in so doing.

In these proceedings the Applicant first asks the Tribunal to accept the late filing of his application by suspending the provisions regarding time limits or to consider the application as being filed within the time limit. In support of that application he offers the bald assertion that he "lives in Ramallah, while the office of [his designated representative (his Counsel)] is in Jerusalem. Due to the continuing [closure of] the West Bank (Ramallah), the Applicant faced difficulties in reaching the office. This application was prepared as soon as the circumstances allowed." He offers no information as to when he decided to apply to the Tribunal for relief against the decision complained of. He offers no information as to the efforts made by him to communicate with his Counsel during the relevant period. He offers no information as to the efforts made by him to travel to the office of his Counsel and when and how his plans (if any) were foiled. He offers no information as to why he could not instruct his Counsel by telephone or fax. He offers no information as to when contact was first made and instructions given and seeks to rely solely on the assertions already referred to.

With regard to this preliminary issue of receivability, the Respondent argues that there are no genuinely exceptional circumstances for suspending the provisions regarding time limits. In support of his opposition to the Applicant's request for suspension of the provisions regarding time limits, the Respondent exhibits a number of "constraints reports" from the Director of UNRWA Operations, West Bank, as part of the reporting procedures of the Agency for the relevant periods. These reports satisfy the Tribunal that the closures of the West Bank were few and short and that they, by themselves, could not constitute a justifiable or reasonable excuse for not having complied with the relevant time limit. Furthermore, as the Respondent points out, Counsel could have travelled from Jerusalem to Ramallah and telephones or fax machines could have been used. The Respondent concludes by arguing that the Applicant's Counsel could obviously have applied for an extension of time, made within a period of ninety days from 3 June 1998, had he been consulted in a timely manner. In the circumstances he submits that this preliminary application should fail.

III. The Tribunal is fully satisfied that no genuinely exceptional circumstances have been established and, accordingly, rules that the application is not receivable, being out of time.

IV. Although the Tribunal does not generally review on the merits of a case after ruling that the case is time-barred, it considers that this case is so unsustainable that it deserves comment The BOI had found that the list of persons who were purportedly entitled to remuneration as instructors for administering the comprehensive examination in question contained names of persons who were not participating instructors and, accordingly, were not entitled to such remuneration. Since the Applicant participated in drawing up the list he must have known that it was incorrect. The Tribunal is satisfied that this finding was amply supported by evidence and was a finding which the BOI was entitled to make.

The BOI further found that the Applicant had wrongfully received funds earmarked for such persons and that he had neither passed those funds on to the persons so nominated nor returned them to the Administration. Furthermore, the retention by the Applicant of monies earmarked for persons not entitled to the same is very strong evidence that the Applicant was aware they were not so entitled. Again, the Tribunal is fully satisfied that these findings were amply supported by evidence and were findings that the BOI was entitled to make.

Moreover the Applicant admitted to having received those monies and claimed that he had applied the funds so appropriated by him towards subsidizing fees for needy students or alleviating financial hardship suffered by such students. This aspect was hotly contested by the Respondent and the Applicant was unable or unwilling to present evidence from any allegedly needy student or to produce any documentation to establish that such payments had been made.

V. In the circumstances, the Tribunal is fully satisfied that the Respondent was entitled to treat the findings of the BOI as having established dishonesty on the part of the Applicant. Even if the Applicant had been able to satisfy anyone that the "surplus fees" had been applied by him towards subsidizing needy students (which he was clearly unable to do) the Respondent would have been fully entitled to have found that the Applicant was guilty of serious misconduct. No circumstances are conceivable whereby an employee of the Agency who received fees or other remuneration on behalf

of other nominated persons could be justified in applying them in a different manner altogether, even if the different manner was of a philanthropic nature. His duty would have been to return those fees to the appropriate authority with an explanation. Even diverting them towards other purposes, no matter how noble, would have amounted to misconduct. The Tribunal is fully satisfied, even on the facts accepted and admitted by the Applicant, that he was guilty of misconduct, and that his actions caused real embarrassment to the Agency. His behaviour was wholly unbefitting a person who occupied a position such as the Applicant's. It would do violence to language to characterize, as was done by the JAB, such conduct as "an administrative mistake".

VI. For the above reasons, the Tribunal:

(i) Decides that the application is not receivable, since it is time-barred;

(ii) Rejects all other pleas.

(Signatures)

Hubert THIERRY
President

Julio BARBOZA
Vice-President

Kevin HAUGH
Member

Geneva, 28 July 2000

Maritza STRUYVENBERG
Executive Secretary